UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.165
1 December 1993

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 165TH MEETING

Held at the Palais des Nations, Geneva,
on Monday, 15 November 1993, at 3 p.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Second periodic report of Ecuador (continued)

* The summary record of the closed part of the meeting appears as document CAT/C/SR.165/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.93-85605 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Ecuador (continued) (CAT/C/20/Add.1)

1. At the invitation of the Chairman, Mr. Pinoargote, Mr. Riofrío and Mr. Anda (Ecuador) took seats at the Committee table.

2. Mr. PINOARGOTE (Ecuador) said he agreed with the members of the Committee that the report submitted by his country (CAT/C/20/Add.1) was rather incomplete. In his replies, he would try to clarify and explain the situation in Ecuador. However, he emphasized that, although there were many selective omissions in the report, that was not because Ecuador was trying to hide something, but a result of the problem of reporting at a given time during the ongoing process of reform, which had been made necessary by the years of dictatorship.

3. For example, there was a significant legislative reform under way which had not been mentioned in the second periodic report. In December 1992, the National Congress had adopted new reforms relating primarily to the judiciary. They were far-reaching reforms, but they were not all in force as yet. One example was the new method by which members of the Supreme Court of Justice would be appointed. A two-thirds majority was needed in the National Congress for them to be appointed, whereas formerly a simple majority had been required. In a multiparty system, such as that of Ecuador, the judiciary had, however, been monopolized by a single party. Henceforth that was no longer possible. Consensus among all political forces was needed to ensure that the members of the Supreme Court were selected according to the new rules.

4. Furthermore, the "third instance" in the judiciary had been abolished. Previously, appeals could be made to a "third instance" and cases had lasted for years. At present, the Supreme Court no longer acted as a court of third instance, but as a Court of Appeal and a Constitutional Court.

5. The present Government paid close attention to all matters relating to the Constitution, contrary to what had happened during the dictatorship, which had lasted until 1983. Many laws had been enacted, introducing reforms of all kinds, and new steps were being taken to ensure that all measures adopted were in accordance with the Constitution. In that context, reforms of many laws and of the Code of Penal Procedure and the Code of Civil Procedure were now under way.

6. The renewed democratic legislative process had led to increased participation, not only by lawmakers, but also by society as a whole. Many academics were members of special committees, such as the one set up to amend the Code of Penal Procedure.

7. There were two sets of problems with regard to the Code of Penal Procedure. First of all, there were doctrinal conflicts between experts and trends in criminal law over the reforms under way. There were also vested interests at stake, including those of the police, which had hampered the

enforcement of judicial decisions during the dictatorship. Nevertheless, the stage had been set so that the guilty parties might be brought to justice and, above all, so that military judges could deal only with offences committed by military personnel in the exercise of their functions. Conflicts of jurisdiction were thus not so frequent.

8. He described the institutional structure of Ecuador's former dictatorship. It had been a great deal more than simply a personal dictatorship. At the time, many laws had been enacted to guarantee the impunity of military leaders. The transition from a dictatorship to democracy had been very difficult. In addition to the obvious political problems, the long-term legislative process now under way took time and still had not been completed. What was more, the country had been deeply shocked by the Restrepo case, when the corrupt police chief had fled after learning that a warrant had been issued for his arrest. After that case, measures had been taken that were not yet fully operational, but were helping the country to progress even though the process was slow and difficult.

9. Other problems that were plaguing the reform process included the country's economy and, in Congress, the importance of the Privatization Act. That important issue under consideration by the Congress had somewhat diverted attention from amendments to the Code of Penal Procedure and the Code of Civil Procedure, among others. A specific example of the effect of economic questions on political and legal matters was the proposal to appoint an Ombudsman responsible for human rights issues, which was regarded as an important step for the country. Purely economic reasons were behind the failure to create the post. Economic problems had once again taken precedence. He was, however, optimistic, taking encouragement from the fact that the question had at least been considered.

10. Replying to some specific questions raised by the Committee, he said that, in the event of a conflict between a provision of domestic law and an international standard, the international standard took precedence. Another question had related to the apparent contradiction between the Constitution, under which police custody could last 24 hours, and the Code of Penal Procedure, under which the period was 48 hours. According to a decision handed down by the Court of Constitutional Guarantees, the Constitution took precedence and the period was therefore 24 hours. With regard to the rights of the defence, any detainee could contact his legal counsel; that was a right guaranteed by the Constitution.

11. Referring to investigations and the role of the police, he said that pre-trial investigations were the responsibility of the police and that the judge conducted investigations during the trial. The fact that complaints about the conduct of a police officer were filed with the police was only an apparent contradiction. Even if abuses continued, the police remained the authority to which complaints were made.

12. With regard to drug-related crimes, the most delicate problems arose in small towns, where applications for habeas corpus were submitted to the mayor. Major drug traffickers were sometimes able to avoid justice by getting the mayor to release them. A new Act which applied only to drug trafficking had been promulgated in 1991 to deal with that situation. The Act, which had also

not been referred to in the report, established a special procedure for that kind of crime to prevent habeas corpus from providing a way out for such criminals. There had been a lively doctrinal debate on the abolition of habeas corpus for drug traffickers; a great deal of political pressure had been exerted to oppose the measure. However, as drug trafficking had expanded considerably and as Ecuador was increasingly being used as a stopover for the international traffic, that exceptional procedure had finally been adopted. Moreover, the problem was so serious that the United States of America and the European Community had concluded special agreements with the Andean countries to combat the drug traffic. In addition to trade and economic measures, it had been necessary to adopt for legal and penal provisions and, in individual cases, the power to grant habeas corpus had been taken out of the hands of mayors. That was the only exception to the principle of habeas corpus permitted in Ecuador.

13. As to the compensation of victims, amendments to the Penal Code were being discussed, but still had not been adopted. With regard to remedies available to victims of human rights violations, it had already been stated that such persons could appeal to the ordinary courts, the Court of Constitutional Guarantees, the Commission on Human Rights of the Congress or the Sub-Secretariat of Justice of the Ministry of the Interior. In that context, what was the role of the Commission on Human Rights of the Congress? In Ecuador, there was no single body responsible for human rights issues; it had been decided that various types of remedies should be available. In that connection, the work of the Court of Constitutional Guarantees was very important and the role of the Commission on Human Rights of the Congress was to strengthen and supplement that work. Since human rights violations were often committed by public officials, police officers or members of the military, the Sub-Secretariat of Justice had recently been set up in the Ministry of the Interior in addition to the two above-mentioned bodies. Human rights remedies were thus available in the three branches of Government. It was still possible to appeal to the Attoreney-General's Office and, among others, to the prosecutors in the various districts, who referred cases to the competent judicial authorities. A wide range of parallel remedies was deliberately made available not to complicate, but to facilitate the submission of complaints by persons whose human rights had been violated.

14. The establishment of a Judicial Police should be an important step towards the eradication of torture. The Regulations of 7 August 1992, mentioned in the report, organized the operation of the technical body which was responsible for carrying out the orders of magistrates, judges and public officials of the Attorney-General's Office. Courses had already been organized to provide the necessary training for public officials who would work in the body which would be responsible for criminal investigations instead of the National Police, which, in the past, had been guilty of human rights violations and had had genuine professional torturers in its ranks. The Judicial Police would be composed of persons with a university education, lawyers, for example, and the courses to be organized for them, and their recruitment, had been announced in the press. Nevertheless, the process was still continuing and the long-awaited Judicial Police was still not operating independently, with the result that the Crime Investigation Office, whose reputation was not very good, continued to deal with criminal matters. The highly technical nature of the future specialized police body would require

massive investments (for laboratories, etc.), which were difficult to make at present. It was also undeniable that some persons were against the establishment of the Judicial Police and opposed it on different pretexts. That was why the Judicial Police was still without resources or facilities, although it did exist on paper. The Government could very well have taken the easy way out and simply given a new name to an old institution, but it had refused to do so, preferring to proceed slowly, but surely. What was at stake was not only to protect the human rights of persons who could not defend themselves, but also to prevent people with influence, namely, high-ranking public officials, politicians, police and army officers, from using their power and the contacts available to them to escape justice, as had unfortunately often been the case in the past. Admittedly, that did not mean that the situation would be perfect once the Judicial Police was operational, but at least its activities would be more in line with what the Attorney-General's Office and the public expected of it. There was considerable eagerness for the new, improved police service to begin operations, after delays caused by the above-mentioned factors, and he hoped that international pressure and, in particular, the interest shown by the Committee would encourage the Government to persist with its project.

15. With regard to the additional information requested on certain cases, he had received information only on some of the cases submitted by Amnesty International. The Ministry of the Interior was still investigating others. In the first place, the allegations made by Mr. Cabascango were groundless, as he had never been under investigation. A group of indigenous persons had indeed been arrested for causing a public disturbance, but there had been no investigation. Mr. Cabascango and the other indigenous persons had not been ill-treated and it had been established that there was no evidence of blows or ill-treatment on their bodies. Furthermore, they had not lodged any complaints or provided any medical certificates.

16. The case of Mr. Bustos was different. The Ministry of the Interior had given no information, but the Government Procurator's Office had stated that Mr. Bustos had suffered injuries. He himself had no further information on the case nor on that of Mr. Chauvín, who had not supplied the information requested so that responsibility could be established. It had been impossible to determine whether Mr. Aguilera López had been subjected to ill-treatment. It had been pointed out that the superficial bruising on his body could have happened before he had been detained. The autopsy had also indicated the presence of meningococci in his body, as well as various other health problems.

17. He welcomed the seriousness with which the Committee had considered his country's report. Although he had been unable to answer all its questions, he assured it that the President of Ecuador was deeply concerned about human rights and was determined to maintain and develop the human rights tradition in the country. He would be sure to inform his Government of all the observations and suggestions made and the shortcomings highlighted so that it would speed up the process of legislative and administrative reform and, next time, send the Committee a more comprehensive report.

18. Mr. LORENZO (Country Rapporteur), noting the wish expressed by the representative of Ecuador that, in future his country's reports should be more comprehensive and that torture should be combated more efficiently, suggested that the Government of Ecuador should create a inter-ministerial body in which the ministries concerned, together with the Congress, the Attorney-General's Office, etc., and non-governmental organizations, would be represented. That kind of body, which had already been set up in other countries, could undertake to ensure that more detailed reports were submitted to human rights bodies of the United Nations and other international organizations and that the recommendations made by those bodies were followed up.

19. The delegation of Ecuador withdrew.

The public meeting was suspended at 4.05 p.m. for consideration of the draft conclusions on the second periodic report of Ecuador; it resumed at 5.05 p.m.

The Committee's conclusions on the second periodic report of Ecuador (CAT/C/20/Add.1)

20. At the invitation of the Chairman, the delegation of Ecuador took seats at the Committee table.

21. Mr. LORENZO (Country Rapporteur) read out the Committee's conclusions to the delegation of Ecuador:

"1. The Committee against Torture considered the periodic report of Ecuador at its 164th and 165th meetings, on 15 November 1993, and adopted the following conclusions:

I. Introduction

2. The Committee thanks the State party for its report and its sincere cooperation in the constructive dialogue established with the Committee. It takes note of the information submitted in the report and in the oral introduction by the delegation of Ecuador.

3. Ecuador has fulfilled its obligation to submit a periodic report under article 19 of the Convention. Its next report is due on 29 April 1997.

II. Positive aspects

4. The Committee appreciates the firm commitment of the Government of Ecuador to the promotion and protection of human rights and in particular its efforts to eradicate all forms of torture.

5. It also appreciates the efforts made by Ecuador to modernize its legislation (Constitution, Penal Code, Code of Penal Procedure and Act on the Attorney-General's Office) and to establish a Judicial Police, which will be the only public body responsible for criminal investigation, under the direct supervision of independent magistrates.

III. Subjects of concern

6. The Committee is nevertheless concerned by the many allegations received from various non-governmental organizations concerning torture, which is reportedly practised in a number of places of detention and prisons, particularly in the premises of the Crime Investigation Office (OID).

7. The Committee is also concerned by the fact that no action has been taken on several of the recommendations it made to Ecuador in 1991, in particular those aimed at bringing all custodial measures (arrest warrants, habeas corpus) under the direct responsibility of independent members of the judiciary. In general, the Committee is concerned by the limitations which appear to be placed on the powers of the courts in Ecuador and by the existence of public officials referred to as 'judges' who are empowered to try cases without belonging to the judiciary and consequently do not provide safeguards of independence.

IV. Recommendations

8. The Committee recommends that Ecuador take fundamental and urgent steps for the complete eradication of torture and other similar treatment. To that end, the Government should ensure that all forms of torture as defined in article 1 of the Convention are offences under criminal law.

9. The Committee also encourages Ecuador to implement, within a reasonable period, the legislative reforms undertaken to place the criminal justice system (from the investigation of offences to the serving of sentences) under the supervision of independent members of the judiciary and ensure that they can quickly investigate reported or suspected torture or ill-treatment."

22. Mr. PINOARGOTE (Ecuador) congratulated the Committee on the fairness of the conclusions it had formulated and promised to recommend that the Government of his country should prepare more comprehensive reports in future.

The meeting rose at 5.15 p.m.

UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.166
19 November 1993

COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE 166th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 November 1993, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of Portugal

Organizational and other matters (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.93-85592 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Portugal (CAT/C/9/Add.15, HRI/CORE/1/Add.20)

1. At the invitation of the Chairman, Mrs. Alves Martins, Mr. Bastos, Mrs. de Gouveia Araujo, Mr. Henriques Gaspar, Mr. Gomes Dias and Mrs. Mota Matos (Portugal) took seats at the Committee table.

2. Mr. HENRIQUES GASPAR (Portugal) said the fact that the report had been submitted considerably later than the date provided for in article 19, paragraph 1, of the Convention in no way reflected any weakening of Portugal's commitment to its obligations under the Convention. In fact, the delay had made it possible to refer in the report to recent legislation, including a law on international cooperation covering, inter alia, extradition and the assistance referred to in articles 8 and 9 of the Convention.

3. While the report was being drafted, work had started on the revision of the Penal Code with the aim of introducing new types of crimes, particularly those connected with international commitments assumed by Portugal. Under the heading of crimes against humanity, they included new types of crimes of torture and other cruel, inhuman or degrading treatment described in terms of the gravity of the means used and a new crime of failure by a hierarchical superior to report an offence.

4. The first draft, prepared by a committee set up by the Minister of Justice, had been completed in 1991 and had just been published. The revised draft was awaiting consideration by the Council of Ministers and would then be transmitted to the Assembly of the Republic.

5. New legislation had also been adopted in areas relevant to the subject-matter of the Convention against Torture. A new organizational act for the National Republican Guard published in Decree-Law 231/93 of 26 July 1993 took account of the provisions of the 1987 Code of Penal Procedure.

6. An important change in the organization of the courts had been introduced by Decree-Law 321/93 of 15 September 1993. Certain courts would now be open on Saturdays, Sundays and public holidays in order to deal with urgent matters provided for in the Code of Penal Procedure and in the Act on the organization of the guardianship of minors.

7. As far as penal procedure was concerned, the aim was to ensure full compliance with the rule that anyone arrested had to be brought before the examining magistrate within at least 48 hours in order for the arrest to be confirmed.

8. Training in criminal law, penal procedure and human rights was being given to the police force and to prison staff, especially with regard to police conduct, police-citizen relations and interpersonal relationships in prisons.

9. For example, efforts were being made to improve training and information in police academies for the judicial police and the public security police through an in-depth study of United Nations and Council of Europe instruments on human rights and police conduct. Those instruments were disseminated in police academies and in the higher ranks of the National Republican Guard. Particular attention was being paid to information for prison guards and teaching staff. Courses on criminal law were given by professors from university law faculties.

10. In accordance with article 17 (g) of the new Prison Staff Rules, adopted by Decree-Law 174/73 of 12 May 1993, a higher educational level was now required for prison guards. The Rules also provided for training courses for senior officials and ongoing training courses for prison staff.

11. In 1992, the Prison Administration and the Institute for Social Rehabilitation had taken the initiative of providing information for detainees on their rights under Portuguese penal procedure, including the right to a lawyer or, for foreigners, to an interpreter and the possibility of asking for medical assistance when necessary. That information was provided in Portuguese, German, English, Spanish and French and was issued to arrested persons when they entered prison.

12. If allegations of violations of the rights and freedoms of citizens were brought to the authorities' attention despite such training and information activities, disciplinary or criminal proceedings were instituted. In addition, the public prosecutor's department was responsible for supervising the procedural activity of criminal police bodies and the Attorney-General had the possibility of ordering general and periodic inspections of the judicial police. Such inspections had been carried out every three years.

13. Mr. BEN AMMAR (Country Rapporteur) said that the core document on Portugal (HRI/CORE/1/Add.20) gave a clear idea of Portugal's political structure and legal framework. Following the 1974 revolution, Portugal had become a democratic State and a party to many international and European instruments guaranteeing respect for and the protection of human rights.

14. Portugal's initial report (CAT/C/9/Add.15) was in keeping with the Committee's reporting guidelines, but regrettably, had been submitted three years late. The Committee nevertheless believed that Portugal intended to honour its international commitments and had established the necessary structures for the preparation of reports.

15. In the Constitution, Portugal had made it clear that it intended to implement the provisions of the Convention, as shown by article 25, which stated that the moral and physical integrity of individuals was inviolable and that no one should be subjected to torture or to cruel, degrading or inhuman treatment or punishment. Article 18 of the Constitution provided that the Convention was directly applicable to and binding on public and private bodies. It was worth nothing that, if a court refused to take account of a provision of an international convention, it was mandatory for the public prosecutor to appeal against that decision to the Constitutional Council.

16. The Committee welcomed the fact that article 16 of the Constitution provided that the constitutional and legal norms relating to fundamental rights should be interpreted and applied in accordance with the Universal Declaration of Human Rights.

17. However, the statement in paragraph 15 of the report that the Universal Declaration had entered into force for Portugal on 9 March 1978 was inappropriate: the Declaration was morally binding and did not have the binding legal nature of the Covenants and Conventions. Perhaps reference should have been made to the International Covenant on Civil and Political Rights.

18. The Committee also noted that article 12 of the Constitution safeguarded the right to petition and that article 22 provided for the State's joint liability for any act or omission of its officials resulting in a violation of rights and freedoms. Article 32 of the Constitution stated that evidence obtained through torture was null and void and article 19, that the declaration of a state of siege or emergency could not be invoked as a justification for torture and could never affect fundamental rights such as the right to life and personal integrity and the right of defence of accused persons.

19. However, he believed that two matters give rise to substantive problems.

20. Paragraph 29 of the core document stated that the organs of supreme authority, namely, the President of the Republic, the Assembly, the Government and the courts had to observe the principles of separation and interdependence established by article 114 of the Constitution. What effect might that provision have on the independence of the judiciary?

21. Paragraph 30 of the core document indicated that the Government had competence to legislate on rights, freedoms and safeguards, the definition of offences, sanctions and security measures, as well as criminal procedure. Those prerogatives were, however, excessive and might well turn the executive into a superpower; they were, moreover, not compatible with democratic principles.

22. With regard to the territory of Macao, which was at present under Portuguese administration and was to be returned to the People's Republic of China in December 1999 under a Joint Declaration signed by Portugal and the Chinese Government, China had promised to respect the legal, social and economic system in force on that date and to guarantee civil and political rights. However, the Joint Declaration did not mention the Convention against Torture or the International Covenant on Civil and Political Rights, and that was a serious omission, since both instruments should apply to the whole of Portuguese territory, including dependent and trusteeship territories. Did the Portuguese Government intend to remedy that situation by extending the scope of the Convention, in view of the fact that Macao had its own legislation and legislative bodies? That question had also been raised by the Human Rights Committee when it had considered the report of Portugal (CCPR/C/42/Add.1).

23. As far as legislation was concerned, article 412 of the Penal Code provided for the punishment of violence, serious threats or any other illegal means of constraint designed to obtain a written or oral statement from an accused person. In the Committee's view, such offences were restrictive and did not square with the purpose of the Convention and the definition of torture contained in article 1: the idea of punishment was not present. Article 2 of the Convention provided that each State party should take effective legislative, administrative, judicial or other measures to prevent acts of torture. Whether the measures adopted by Portugal had been sufficiently effective remained to be seen.

24. In paragraph 35 of the report, it was stated that the Decree-Law of 21 September 1990 required the judicial police to refrain from inflicting torture, inhuman, cruel or degrading treatment and gave them the right not to execute and, if necessary, to disregard orders or instructions to apply such treatment. Did such provisions also apply to other police bodies?

25. Paragraph 54 indicated that radical changes had been made in order to reinforce further the prohibition of torture and other ill-treatment by imposing severe sanctions on persons committing such offences. Could the Portuguese delegation tell the Committee what those changes were?

26. In connection with article 4 of the Convention, the report listed the sentences applicable to 16 types of crime, but the list did not contain the crime of torture or cruel, inhuman or degrading treatment. Perhaps it came under the various offences connected with misuse of power.

27. The Committee would like to have statistics, as requested in the general guidelines, on the number of cases brought by the Ombudsman or the public prosecutor, the number of complaints filed by victims, their families or counsel, and the results of the inquiries.

28. He had no particular questions on article 10. It seemed that the Portuguese authorities were making great efforts to educate, train and inform the various professional bodies involved in preventing and punishing torture, as well as the public at large.

29. He particularly wished to know what legislative provisions applied to police custody and pre-trial detention and whether they fully complied with article 11 of the Convention on the obligation to ensure a systematic review of "interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment". He also asked whether a list of detention centres was included in legislative instruments or elsewhere, how long police custody lasted under normal circumstances and in a state of emergency, whether legal counsel could be present during interrogations, not only under normal circumstances, but also during states of emergency and states of siege, the point at which the detainee's family was notified of his arrest, the stage at which a medical doctor was allowed to visit a detainee, whether the doctor could be chosen freely by the detainee or his family, was designated by the medical board or chosen by the authorities, and whether the Attorney-General,

his representatives or the Provedor de Justiça (Ombudsman) had access to police stations and other detention centres at any time of the day or night without having to give prior notice.

30. Pre-trial detention was of particular concern, as it could last 12 or 16 months or even up to 3 or 4 years, depending on how many persons had been accused or had been the victims of a crime and whether organized crime was involved. Detaining people for such lengthy periods was contrary to the principle of the presumption of innocence.

31. As a State party to the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, Portugal had been visited by one of the committees which had been set up under the Convention and was responsible for inspecting prisons and detention centres. Had the committee's report been made public and, if not, did the Government intend to make it public?

32. Reliable sources had indicated that the efforts being made by Portugal's authorities, including the establishment of the Provedor de Justiça (Ombudsman), the Portuguese Association for the Support of Victims (APAV) and educational programmes, were not having much of an impact.

33. Amnesty International had stressed that acts of violence and torture at police stations and in civil and military prisons were still being reported. It had also stated that judicial investigations were often extremely slow, frequently lacked thoroughness and were often inconclusive. In fact, very few judicial investigations into allegations of torture and ill-treatment had resulted in the prosecution of law enforcement officials, even when the crimes had been particularly serious and medical reports had corroborated the allegations.

34. Amnesty International had raised the matter of cases of torture with the Portuguese authorities before making them public in a document dated October 1993. For example, the document referred to the cases of Mário Manuel da Luz and Isidro Albuquerque Rodrigues, both of whom had been charged with ordinary criminal offences. Mário Manuel da Luz had been held at Linhó prison until his death in June 1989. According to his fellow prisoners, he had been systematically beaten every day. The prison director had been suspended from his post, but no administrative or judicial investigation had been conducted in the four years since the death of Mário Manuel da Luz. Isidro Albuquerque Rodrigues had been arrested by the judicial police. He had been subjected to torture during his detention and had subsequently passed on the names of his aggressors to the media. A communication sent by Amnesty International to the Ministry of Justice had received no reply. In May 1992, the Attorney-General had confirmed that an investigation was under way, although its outcome was still unknown.

35. Amnesty International had also reported the case of José Luis Barros and Paulo Jorge Gomes Almeida, who had allegedly been violently beaten by two officers of the Public Security Police (PSP), in September 1990. One of the officers had been acquitted and the other had been given a light sentence, but had later been pardoned under the amnesty passed in July 1991.

36. Portugal should consider making it compulsory for members of the police force and law enforcement agencies to respect the dignity and physical and moral integrity of the persons in their charge at all times. It was to be hoped that the proposed amendments to the Code of Penal Procedure and other instruments would ensure fuller compliance with the provisions of the Convention.

37. The CHAIRMAN, speaking in his capacity as Alternate Country Rapporteur, thanked the representative of Portugal, for his oral introduction to the initial report.

38. The absence of a definition of torture in Portuguese law was regrettable and apparently undermined the direct application of the Convention. Article 1 of the Convention was not covered by the vague reference to "violence, serious threats or any other illegal means of constraint" punishable under article 412 of the Penal Code. Portugal had to specify exactly which crimes constituted torture or ill-treatment and impose the corresponding penalties. He requested information on article 132, paragraph 2 (b), of the Penal Code, as referred to in paragraph 18 of the report, on cases brought before the courts and on judgements handed down.

39. Paragraphs 116 to 126 did not explain the legal basis for the implementation of article 3 of the Convention. The report also did not provide adequate details of whether there had been cases of torture or ill-treatment in Portugal in recent years and, if so, why they had occurred, why they had not been prevented and what had been done to punish the perpetrators. It thus did not comply with the general guidelines regarding the form and contents of periodic reports (CAT/C/14).

40. Amnesty International had provided extensive information on cases of torture and ill-treatment, some of which dated back a long time, and had drawn attention to the fact that judicial investigations had tended to be slow, were not thorough enough, or resulted in light sentences for those found guilty, especially when law enforcement officials were involved. What had been done in response to those allegations?

41. It was regrettable that law enforcement officials were sometimes quite brutal in their treatment of suspects and detainees. More often than not, they went unpunished and, aware of their impunity, continued to engage in practices which were contrary to the provisions of the Convention. The table in paragraph 172 of the report implied that there were few actual cases of police violence, but that had been strongly refuted by the information contained in the reports compiled by Amnesty International and other international human rights organizations. Moreover, the table gave information and figures only for the period from 1987 to 1989. What had happened since 1989?

42. Mr. LORENZO thanked the representative of Portugal for his country's detailed report and for his interesting oral introduction.

43. The information on what could be termed widespread cases of torture and ill-treatment provided by reliable sources gave rise to serious concern. The Committee traditionally criticized less developed countries for failing to

eradicate torture and other regrettable practices. Although such violations of human rights could never be justified, those countries' weak economies and low level of development helped to explain why such practices persisted. The Committee should, however, reserve its strongest condemnation for any European country guilty of similar violations, for which there could be no excuse.

44. Paragraph 31 of the report referred to the special safety measures authorized in Portugal, including isolation of the prisoner from the prison population; removal of, or restrictions on, outdoor periods; the use of handcuffs, and confinement in a special security cell. He wished to know how long such measures could be applied because, if they lasted too long, they could be regarded as cruel and inhuman treatment or punishment.

45. Mr. EL IBRASHI said that paragraph 55 of the core document stated that "The military courts have jurisdiction to try essentially military offences", but also that "If there is good cause, the law may give these courts jurisdiction over certain deliberate offences that may be considered to amount to essentially military offences". What kind of offences did the courts therefore deal with and had any civilians been brought before them?

46. Paragraph 111 of the report said that there were certain rights, freedoms and safeguards that could not be suspended or set aside during a state of siege or a state of emergency. However, paragraph 113 went on to state that "the suspension of the exercise of those rights which may be set aside must always observe the principles of equality and non-discrimination". It was not clear which rights were being referred to. How many times had the state of emergency been declared and did it affect any of the rights provided for in the Convention?

47. Paragraphs 191 to 196 on the implementation of article 14 referred only to compensation for physical violence, but did not mention compensation for moral and mental torture. Was that because there were no provisions in Portugal's legislation to deal with such torture? If such provisions did exist, what cases had been brought before the courts?

48. Paragraph 194 said that "applications for compensation must be submitted to the court competent to judge the criminal offence" and that "Acquittal in criminal proceedings does not of itself entail loss of the right to compensation". He asked whether that was a reference to State responsibility and civil liability.

49. He requested clarification on the reference in paragraph 56 of the report to the National Republican Guard's role as "legal guarantor of the exercise of the rights and fundamental freedoms of citizens". Which rights in particular had been entrusted to the National Republican Guard?

50. Mr. BURNS said that he agreed with other members about the importance of having a definition of torture. Portugal had been requested to provide statistical details, yet it seemed virtually impossible for a country to distinguish between cases involving overzealous policemen and acts of torture unless it had such a definition in its domestic law.

51. With regard to the question of obeying the orders of a superior, he asked whether such an argument was in any way recognized as a defence or as an extenuating circumstance during sentencing.

52. Portugal clearly had a comprehensive formal system of protection, but, as the report of Amnesty International suggested, a gap existed between theory and practice. Was there an informal system of impunity in Portugal? If so, what measures were being taken by the Government to combat it? He had in mind the reporting, timely investigation and vigorous prosecution of complaints in the courts. He had seen nothing in Portugal's report to indicate that the problem of torture was taken seriously by the medical profession. He requested further details on how the medical profession and the public prosecutor's department operated within prisons.

53. An amnesty had been granted in Portugal at least once in the recent past and he wondered how often amnesties had been proclaimed in the past decade and whether they were of a general nature or only for a certain category of accused persons in prison. He noted that, in one of the few cases in which a prison officer had been convicted of torture, he had been amnestied.

54. Referring to paragraph 61, he noted that article 6, paragraph 1 (e), of the Decree-Law, stated that a request for international cooperation in criminal matters would be refused if the act to which it related was punishable by death or by life imprisonment. Did that mean that, if a Canadian sexual psychopath had killed a number of women and then fled to Portugal, the Government of Portugal would refuse a request for cooperation because the act was punishable by life imprisonment?

55. Turning to paragraph 172, he said he was pleased to see that the Provedor de Justiça, (Ombudsman) had such broad powers. At the same time, he asked what the term "legal proceedings" meant in that paragraph. Did it refer to pre-trial or to subsequent detention? Was the term "penal establishments" a reference to police stations? He wondered why the table in paragraph 172 provided no information later than 1989 and whether the information was comprehensive. It was surprising that there had been only one case of police violence recorded in 1988 and only two in 1989.

56. Paragraph 116 stated that, under article 33 of the Constitution, Portuguese citizens could not be extradited or deported from the national territory. If a Portuguese national alleged to have committed torture in a foreign territory was arrested in Portugal, how did the Government of Portugal proceed?

57. During the 48 hours of detention, could the accused have access to counsel? Could the 48-hour period be exceeded under certain circumstances?

58. Paragraph 182 related to the case of a Government official who had been sentenced to 18 months' imprisonment for committing homicide with a firearm. He inquired whether the use of the firearm had been found to be negligent or wilful; in the latter case, the sentence appeared to be very lenient.

59. According to paragraph 197, article 32, paragraph 6, the Constitution of Portugal stipulated that evidence obtained through torture was null and void. With that in mind, he would like the delegation of Portugal to comment on the case of Isidro Albuquerque Rodrigues, as described in the report of Amnesty International, who had claimed that his confession had been extorted by torture, but who had nevertheless been sentenced to 18 years' imprisonment. Had there been a judicial inquiry into his allegation and, if so, what had its findings been? Amnesty International had also reported the case of Paulo Jorge Gomes Almeida, who had suffered grievous bodily harm at the hands of the police; one police officer had been found guilty, but had benefited from an amnesty before beginning his sentence. How was it possible to reconcile amnesty for Government officials who committed acts of torture with article 2, paragraph 1, of the Convention, which required States to take effective measures to prevent acts of torture? In that connection, what were the concept and the rationale behind the Law on Judicial Secrecy, to which reference had been made in the report of Amnesty International?

60. Mr. SORENSEN said that he would not take part in the discussion, inasmuch as Portugal had not decided to make public the confidential information available to the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, of which he was a member. He would comment only on medical matters.

61. With regard to paragraph 37, he welcomed the Code of Ethics drafted by Portuguese physicians in 1982. But did the Government of Portugal acknowledge the Code and was it binding on the Government? Could physicians be brought to court for violating the Code, in particular physicians at risk working for the police or in prisons? Were the latter physicians employed by the Ministry of Justice or the Ministry of Health? How was their independence ensured? Could they appeal to a medical board if they were accused of wrongful behaviour?

62. Turning to paragraphs 191 to 196, he recalled that, under article 14 of the Convention, rehabilitation must be as full as possible, and that included medical rehabilitation for the victims of torture. He asked whether rehabilitation centres existed and pointed out that the United Nations technical assistance services would be willing to assist Portugal in setting up such facilities.

63. Lastly, he referred to the United Nations Voluntary Fund for Victims of Torture. The Fund was in need of resources and any contribution would be welcome, as a gesture to show a willingness to rehabilitate the victims of torture. Acknowledging the existence of torture victims was seen as a form of redress.

64. Mr. DIPANDA MOUELLE, joining the other members of the Committee in thanking the delegation of Portugal for the wealth of information provided in its report, asked for clarification on a number of points.

65. The reference in paragraph 10 to "wrongful interference in private lite, the home, correspondence or telecommunications" might give rise to confusion. In his view, the concept of "wrong" should be interpreted in more rigorous

fashion; it would be better to rely exclusively on article 18, paragraph 2, of the Constitution of Portugal, as set out in paragraph 16 of the report. He asked the delegation of Portugal to comment.

66. No mention was made of the penalties imposed for the offences described in paragraph 17 and he requested further details so that the Committee could verify whether they were consistent with the spirit of the Convention.

67. Concerning paragraph 19, he would like to know whether the law punished all sexual acts with detainees, even if such acts were consensual. If so, did the law provide for extenuating circumstances?

68. He wondered whether the phrase "if this is necessary to protect his privacy" in paragraph 26 was not superfluous.

69. Paragraph 28 discussed the use of force and he inquired what kinds of force were employed.

70. In paragraph 57, it would appear that the compensation described in Decree-Law No. 324/85 concerned government officials, rather than the victims of torture, as required under the Convention.

71. Lastly, could the delegation of Portugal provide a description of the judicial system and explain how the independence of the judiciary was ensured?

72. Mr. KHITRIN asked the delegation of Portugal to enumerate the main activities of the public prosecutor's department. In particular, did it monitor the legality of judicial proceedings? What was its role in investigating cases involving torture?

73. He also wished to know whether the Provedor (Ombudsman) had a staff and how much staff members earned. Was the Provedor really independent and what was his relationship to the public prosecutor's department?

74. What was the status of military tribunals? Portuguese law allowed military tribunals to sit in judgement for certain kinds of crimes; could the delegation of Portugal inform the Committee what kind of crimes were involved? Furthermore, who punished a military serviceman guilty of having committed a crime? Where were such persons held and what were the conditions of their detention?

75. Mr MIKHAILOV congratulated the Portuguese delegation on the report, which appeared to reflect substantial changes, at least in terms of legislation, since the beginning of the transition to democracy. In addition to the many questions already asked by other members of the Committee, he wished to raise a number of points of his own in connection with the report.

76. Referring to the fact that, according to the Constitution, the provisions of all duly ratified international conventions were incorporated into domestic law (paras. 48 and 49 of the report), he asked whether courts could invoke article 1 of the Convention relating to the definition of torture and whether they did so in practice.

77. He wished to know whether Portugal had signed the European Convention on the Suppression of Terrorism referred to in paragraph 61 and whether specific legislation existed for the suppression of terrorism.

78. He noted from paragraphs 120 and 121 that the extradition procedure in Portugal consisted of an "administrative phase" and a "judicial phase". He wished to know how those phases were related and whether the judicial phase was subordinate to the administrative phase.

79. With regard to the question of compensation, he noted that, according to paragraph 191, several avenues were open to persons seeking compensation: the general principle was stated in article 483 of the Civil Code, while article 22 of the Constitution dealt more specifically with the liability of public authorities and was complemented by Decree-Law 48051 of 31 November 1967. Compensation for persons acting in an official capacity who had been victims of violence was governed by other legislation cited in paragraph 57. He wished to know what the relationship was between the Civil Code and the Decree-Law and what mechanisms existed for providing compensation. He also wanted to know whether, in the view of the Portuguese delegation, a proper balance had been struck on the legislation between the rights of ordinary citizens and those of public officials.

80. He presumed that capital punishment had been abolished, but it was not clear what penalties had taken its place.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Consideration of the Committee's methods of work (continued)

81. The CHAIRMAN, referring to the Committee's discussion on the contents of the annual report (CAT/C/SR.156), said that it was his understanding that the annual report would be confined to the full text of the Committee's conclusions and recommendations and refer to the relevant summary record for details of the discussion of the reports of States parties and the questions and replies arising from them.

82. It was so decided.

Appointment of a new Alternate Country Rapporteur for Cyprus

83. Mr. SORENSEN said that the illicit publication in a Cypriot newspaper of parts of the report by the European Committee for the Prevention of Torture, of which he was Vice-Chairman, had placed him in a somewhat embarrassing position, in that his own independence and impartiality might be regarded as compromised. Under the circumstances, he would feel happier if the Committee would allow him to step down as Alternate Country Rapporteur for Cyprus.

84. The CHAIRMAN suggested that Mr. El Ibrashi should replace Mr. Sorensen as Alternate Country Rapporteur for Cyprus.

85. It was so decided.

Working methods of other treaty bodies (continued)

86. Mr. EL IBRASHI reported on the forty-ninth session of the Human Rights Committee and, in particular, on the recommendations which had been discussed concerning working methods. In his view, some of those recommendations were of great relevance to the Committee against Torture. Of particular interest was the decision by the Human Rights Committee to revise rule 70 of its own rules of procedure concerning the submission of reports. In future, States parties would be reminded where appropriate of the availability of the advisory services. In addition, the Committee's own comments on the reports of States parties would be restructured and would include an introduction, followed by sections dealing with various difficulties impeding the application of the Covenant on Civil and Political Rights, positive aspects, principal subjects of concern, and proposals and recommendations. It had also been agreed that the Committee's observations would be made available to delegations at the last meeting of the session and made public immediately thereafter. Documents from non-governmental organizations would be officially distributed to all Committee members in the original languages. Another important decision had been that, where a State party's third periodic report revealed a grave human rights situation, the Human Rights Committee would ask the Secretary-General to inform the competent organs, such as the Security Council.

87. Other recommendations, which had been discussed, but not adopted, were also of interest to the Committee against Torture. In particular, the Working Group responsible for reviewing working methods had recommended that States parties whose reports were five years or more overdue should be sent one final note verbale urging them to submit their reports as soon as possible, with the warning that failure to do so would result in a report being prepared by a member of the Committee on the basis of available sources of information.

88. The Working Group had also recommended that, where an initial report was clearly deficient, the Committee should request resubmission in the near future, and had proposed that a list should be drawn up of issues to be covered in initial reports, with a view to reducing the number of deficient initial reports. Two other recommendations were that the Committee should appoint members responsible for briefing it on the activities of other United Nations organs and international human rights bodies and that a computer database should be installed in the Centre for Human Rights.

89. The CHAIRMAN thanked Mr. El Ibrashi for his report and suggested that it should be left to the new membership to take any final decisions on the Committee's working methods on the basis of the information which had been presented and the Committee's previous discussions.

90. It was so decided.

The meeting rose at 12.45

UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.167
3 December 1993

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 167th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 November 1993, at 3 p.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of Portugal (continued)

* The summary record of the private part of the meeting appears as document CAT/C/SR.167/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.93-85639 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Portugal (continued) (CAT/C/9/Add.15)

1. At the invitation of the Chairman, Mr. Henriques Gaspar, Mrs. Alves Martins, Mrs. Mota Matos, Mr. Gomes Dias, Mr. Bastos and Mrs. de Gouveia Araujo (Portugal) resumed their places at the Committee table.

2. Mr. HENRIQUES GASPAR (Portugal) said that before replying to the questions put to his delegation by members of the Committee at the previous meeting, he wished to make it clear that Portugal was a democratic and pluralistic State under the rule of law. Moreover, its legislative instruments were up to date and its institutional machinery for the protection of human rights effective and efficient.

3. The acts mentioned in article 1 of the Convention were offences under the Portuguese Penal Code; the penalties were increased if the perpetrators of torture and ill-treatment were public servants or members of the security forces. The public prosecutor's department, which was responsible for the investigation, was completely independent of the executive and administrative branches and acted strictly in accordance with the principle of legality. Its decision whether or not to proceed with a case was taken in a completely objective manner on the basis of the evidence collected during the investigation. The punishment was decided upon by the courts in accordance with the principles of humanism and equity on the basis of the facts, evidence and circumstances. Prison sentences usually ranged from a minimum of 1 month to a maximum of 21 years, but the Penal Code stated that the maximum prison sentence for the most serious cases could be 25 years.

4. With regard to the direct applicability of article 1 of the Convention, he said that the fact that the crime of torture was not yet specified as such in the Penal Code did not mean that there could be no prosecution under that Code for acts corresponding to a form of torture or ill-treatment; offenders were prosecuted and sentenced on the basis of articles 132, 144, 156, 157, 412, and 417 of the Penal Code. However, as had already been said, the Penal Code was being revised. It had been decided to include articles on the crime of torture under the heading of "Torture and other cruel, degrading or inhuman treatment". The first of those articles provided that any person responsible for the custody of detainees and for the prosecution of offenders who inflicted torture or cruel, degrading or inhuman treatment upon any such person for the purpose of obtaining from him or from another person a confession, a statement, a declaration or information, or to intimidate that person or another would be sentenced to between one and five years' imprisonment if the acts did not constitute a more serious offence. The sentence was imposed regardless of whether the person acted on his own initiative or own the order of a superior. In the draft penal code, torture and cruel, degrading and inhuman treatment were defined as any act consisting in the infliction of physical or acute mental suffering and any act entailing

the use of a chemical substance, drug or any other natural or artificial substance with the intent of seriously diminishing a person's ability to express his will freely. Another article in the draft penal code, covering the most serious crimes, provided that any person who, in the conditions set out in the previous articles, seriously impaired the physical integrity of another by means of particularly severe forms of torture (such as blows, electric shocks, mock execution or hallucinogenic substances) or habitually practised such acts, would be sentenced to a term of imprisonment of between 3 and 12 years. If the torture and ill-treatment inflicted resulted in the suicide or death of the victim, the offender could be sentenced to between 5 and 15 years' imprisonment.

5. With respect to the legislative competence of the Government in certain matters relating to citizens' rights and freedoms, he read out article 168 of the Constitution, entitled "Relatively reserved legislative powers". The article listed matters within the competence of the Assembly of the Republic save where the Government had been authorized to legislate. It specified that the laws granting authorization to legislate determined the subject, the intent, and the scope of the authorization, as well as its duration.

6. As far as the jurisdictional functions and status of judges was concerned, he referred to article 205 to 206 of the Constitution. The courts were independent and subject only to the law. The judges of the courts of law formed a single body governed by a single statute. They were irremovable and could not be transferred, suspended, retired or dismissed except as provided by law. They could not be held liable for their decisions except as provided by law.

7. In reply to Mr. Khitrin's question on the status and functioning of the public prosecutor's department, he said that the Office of the Public Prosecutor was that department's supreme organ and comprised judges who enjoyed autonomy and were independent of the other branches of Government, and in particular the executive and the Minister of Justice. Under the law its functions included the protection of legality, the representation of the State in the courts, the exercise of criminal action and the direction of criminal investigations.

8. Members of the Committee had inquired about the Provedor de Justiça or ombudsman. The Provedor was appointed in accordance with, and his activities were governed by, article 23 of the Constitution. He was elected by the Assembly of the Republic by a two-thirds majority for a period of four years and could be re-elected. He was independent of all branches of the Government, examined the complaints he received from citizens, and although he had no decision-making power, he made such recommendations as were necessary to the competent bodies in order to prevent and remedy any injustice. When a case involving a complaint came before the courts, the ombudsman could only follow the proceedings and make recommendations to speed them up. He was also authorized to visit, without prior notification, places of detention such as police stations, to speak in private with persons in custody and to take appropriate action if he observed any irregularities.

9. With regard to the disciplinary or criminal sanctions applicable to members of the police force, he explained that police officers could be brought before internal disciplinary bodies and criminal proceedings instituted by the public prosecutor's department under the Code of Criminal Procedure.

10. With respect to the question of secrecy in the administration of justice raised by Mr. Burns, he said that the principle applied was that justice should be administered in public except in the initial stages of the investigation; in other words, secrecy was maintained until the public prosecutor's department had taken a decision to prosecute. Secrecy of investigation was an inherent part of Portuguese doctrine and tradition, and was regarded as a safeguard for the accused, who was presumed innocent, and as a means of checking evidence more effectively.

11. The state of siege and state of emergency were both governed by article 19 of the Constitution on the suspension of the exercise of rights. He emphasized that, under article 19, paragraph 6 of the Constitution, the declaration of a state of siege could in no case affect the rights to life, personal dignity and identity, civil capacity and citizenship of the person, the non-retroactive nature of criminal law, the right to defence of accused persons, and the freedom of conscience and religion. The state of siege was also governed by Act No. 44/1986 of the Assembly of the Republic. In point of fact, a state of siege had never yet been declared and it was to be hoped that it never would.

12. All places of detention in Portugal had been established and were organized in accordance with the law. The rights of accused persons in police custody and the period of pre-trial detention were set out in article 32 of the Constitution on safeguards in criminal proceedings. For example, the accused had the right to choose and to be assisted by counsel at all stages of the proceedings, and the cases and stages in which such assistance was compulsory were specified by law. Under article 28 of the Constitution, on remand in custody, if there was no charge, the detention had to be validated or continued by an order within 48 hours, the court had to hear the reasons for the detention, inform the prisoner thereof, interrogate the latter and allow him or her the chance to defend him or herself. A detained person could choose his lawyer or ask for one to be appointed.

13. The maximum period of police custody before a person was brought before a judge was specified in the Constitution and could never be more than 48 hours. The maximum period of pre-trial detention was indicated in article 215 of the Code of Criminal Procedure; it was 6 months if the accused had not been charged, 10 months if the investigation had taken place and no committal for trial or dismissal of the case decision had been handed down, 18 months if no sentence had been pronounced by the court of first instance, and 2 years if the sentence had not been handed down. Those periods were respectively 8 months, 1 year, 2 years and 30 months in the case of offences punishable by imprisonment of over 8 years or certain specific offences such as drug trafficking, offences under air or maritime navigation regulations, and offences against national integrity and independence.

14. He noted that pre-trial detention was of a limited and quite exceptional nature, and subject to very strict conditions and procedures laid down by law. The decision was taken by a judge, who was required to review it every three months. If a person had reason to believe that his detention was illegal for some reason or another (outside authorized places of detention or beyond authorized limits) he could, exceptionally, make an application for habeas corpus.

15. In accordance with the Constitution and the provisions of the Code of Criminal Procedure, a judicial decision on imprisonment had to be communicated to a member of the prisoner's family. Moreover, as soon as a person was detained he had to be informed of his rights. A document on the subject was given to him and explained. It informed the prisoner of his right to communicate with a lawyer, to inform his family, to refuse to reply, to be brought before a judge within 48 hours, to ask for a doctor at any time and, if necessary, to avail himself of the services of an interpreter. The document was available in Portuguese and four other languages.

16. In reply to a question from the Rapporteur concerning access to places of detention, he explained that the public prosecutor could, without prior notification, visit any place of detention within his territorial jurisdiction. Every member of the public prosecutor's department was allowed free access to penitentiary establishments.

17. Replying to Mr. Dipanda Mouelle he said that in accordance with article 32, paragraph 6, of the Constitution, no evidence obtained under torture was allowed before a court. The same was true of any wrongful interference in private life (telephone tapping, photographs taken in an intimate context, etc.).

18. He explained, in reply to Mr. Sorensen's general question, that the Physicians' Code of Ethics was a set of rules of conduct governing the exercise of the medical profession. If a medical practice was impugned, only the Medical Association, a body quite independent of the State, was competent to take disciplinary measures. In the case of an actual offence, the courts had jurisdiction.

19. Mrs. MOTA MATOS (Portugal) reviewed the legal and constitutional regime governing extradition, which was covered by article 33 of the Constitution. That article set out the principles of non-extradition for Portuguese nationals and non-extradition on political grounds or for crimes punishable by death, as well as the principle that a decision to extradite could be taken only by the judicial authorities. The Constitution proclaimed other principles, including that of non-extradition in cases of crimes punishable by imprisonment for life. Portugal's reservations to the European Convention on Extradition and the European Convention for the Prevention of Terrorism were based on those principles: Portugal did not authorize extradition if the offences involved were punishable by death or by imprisonment for life in the applicant State. The desire to put those constitutional principles into practice had resulted in the adoption of Decree-Law No. 43 of 1991, article 6 of which stated that any request for cooperation in connection with a request for extradition would be refused if the person concerned was likely to be punished by death or imprisonment for life. In the event of a refusal to

extradite, the person concerned could nevertheless be brought before a judge. That provision also applied to the non-extradition of Portuguese nationals: a sentence could be pronounced even if extradition was refused.

20. She recalled that Portugal had been the first country to abolish the death penalty in 1852, and that no death sentence had been carried out since 1846. The philosophy behind the Portuguese prison system was firmly rooted in practice and ensured the social rehabilitation of the person concerned. In that connection, she quoted article 30, paragraph 5, of the Constitution which stated that persons convicted to a sentence or a security measure involving deprivation of freedom could enjoy their fundamental rights, save the limitations inherent in the conviction and the requirements of its enforcement.

21. Extradition procedure comprised two phases. The first, administrative phase, fell within the competence of the Government, and entailed an assessment of a political nature to determine whether extradition was appropriate and whether the request was in order. If the request was rejected the procedure was terminated. If the decision was positive the request was sent to the competent authority, namely, the courts. According to the law it was the courts of second instance that were empowered to decide questions of extradition. The judicial stage was then initiated and the court's decision was final and enforceable, and fully binding on the executive.

22. Mr. HENRIQUES GASPAR (Portugal), turning to the more specific questions put by the members of the Committee, replied to Mr. El Ibrashi, who had asked about compensation, redress and State liability. Compensation implied a liability, determined by a court, but also a guilty party able to pay. Redress, which was the responsibility of the State, implied that no one was liable or that the person liable was not solvent. The State was liable whenever one of its servants was guilty of a wrongful act that caused damage to someone, or whenever the State abused its authority.

23. In reply to a question on the effects of orders given by a superior, he referred to article 271 of the Constitution, by virtue of which an official was not held liable if he acted in accordance with an order received from a superior, on condition that he had previously requested confirmation of that order in writing. The duty to obey ceased, however, whenever the carrying out of orders entailed committing a criminal offence.

24. In reply to Mr. Burns, who had asked how amnesty was granted, he said that amnesty was a general measure that could be proclaimed solely by the Assembly of the Republic. For instance, in April 1991, an amnesty law had been enacted on the occasion of the Pope's visit to Portugal. Since 1974 there had been three amnesty laws, all concerning relatively minor criminal offences. Amnesty was always of a general nature, covering all the inmates of a prison and never a specific individual.

25. In reply to questions put by Mr. El Ibrashi and Mr. Khitrin on the jurisdiction and status of military tribunals, he said that such tribunals were provided for by the Constitution, were composed of military personnel and

civilian judges, and dealt with offences that, under the law, were essentially military offences, such as treason, spying and insubordination. Only military personnel were brought before such tribunals.

26. He apologized for being unable to reply at that stage to a question concerning the report of the European Committee for the Prevention of Torture.

27. Mrs. MOTA MATOS (Portugal), replying to questions from Mr. Lorenzo and Mr. Dipanda Mouelle on special safety measures and the use of means of restraint in prisons, said that the special safety measures were provided for by Penitentiary Law No. 265 of 1 August 1979 and could be applied only in exceptional cases, as when there was a danger of escape or serious disturbances in the prison that could not otherwise be avoided. There was no maximum security establishment in Portugal, but three security blocks had been created in central prisons to accommodate prisoners who could not be subjected to the general regime of prison establishments. Special conditions prevailed in those blocks, but the right to correspondence, visits, exercise and medical care was maintained. Special safety measures were applied under medical supervision. For example, the doctor could ask that a prisoner should be dispensed from the regime and inmates had various possibilities of appealing to national authorities and the European Commission of Human Rights. The use of means of restraint (handcuffs, etc.) was also specified by law and always had to be the subject of a written report setting out the conditions that had necessitated their use.

28. Mr. HENRIQUES GASPAR (Portugal) reviewed a number of cases connected with allegations of torture and ill-treatment which had been the subject of reports from human rights organizations. Following a judicial inquiry, some of the complaints had resulted in the suspects being charged, some had been dismissed for want of proof and yet others were in abeyance pending an investigation. Copies of some of the sentences handed down had been sent to Amnesty International. Moreover, a complaint by five German prisoners to the European Commission of Human Rights in Strasbourg had been found inadmissible by that body. In conclusion, he said that the Portuguese authorities deplored the cases of ill-treatment that had resulted in police and prison officials being charged, but pointed out that those were isolated cases, very few in number, and that the guilty parties had invariably been obliged to resign.

29. The Portuguese delegation withdrew.

The public part of the meeting was suspended at 5.10 p.m. in order to allow consideration of the draft conclusions on the initial report of Portugal in a closed part of the meeting; the public part of the meeting resumed at 5.50 p.m.

30. The members of the Portuguese delegation resumed their places at the Committee table.

31. Mr. BEN-AMMAR (Country Rapporteur) read out the Committee's conclusions as follows:

"1. The Committee against Torture, at its 166th and 167th meetings on Tuesday, 16 November 1993, considered the initial report of Portugal

submitted under article 9 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It listened with interest to the oral presentation and to the explanations and clarifications of the Portuguese delegation. After deliberation, the Committee adopted the following conclusions:

"2. The Committee against Torture notes with satisfaction that the report of Portugal is in conformity with its general guidelines on the presentation of the initial reports to be submitted by States parties under article 9, paragraph 1, of the Convention. It greatly appreciated the spirit of trust and fruitful cooperation that characterized the dialogue that took place with the delegation. However, the Committee noted with regret that the report had been submitted more than three years late, contrary to the provisions of article 19, paragraph 1, which states that States parties should submit initial reports within one year after the entry into force of the Convention for the State party concerned.

"3. The Committee expresses its appreciation for the efforts made by the State party in the constitutional and in legislative fields to ensure that its legal system is in conformity with the Convention. Those efforts seem to be the expression of a genuine desire to create the conditions necessary to protect the physical and moral integrity of individuals and to prevent the practice of torture and cruel, inhuman or degrading treatment.

"4. In particular the Committee appreciates the fact that the Constitution of Portugal states that duly ratified international conventions are directly applicable and directly binding on all public and private bodies and affirms the joint liability of the State, its public bodies and officials in civil matters, and the invalidity of evidence obtained under torture. The Committee also appreciates the fact that the Constitution clearly proclaims that the right to physical integrity cannot be called in question when the country is under a state of siege or a state of emergency. It considers as positive the objectives of the institutions set up to protect and promote human rights, including the Provedor de Justiça, and the broad teaching, training and information programme being carried out to that end.

"5. However, the Committee against Torture notes with regret that, despite those efforts, ill-treatment and occasionally acts qualified as torture continue in police stations and other places of detention throughout the country, as well as the fact that investigations into such allegations are often embarked upon rather late, that they last too long and that offenders are not always brought to court. That situation, together with the lightness of the sentences imposed, creates an impression that the culprits act with relative impunity - an impression that can have a very adverse effect on the implementation of the provisions of the Convention. The Committee also considers that the duration of pre-trial detention, both in law and practice, is a negative factor. Moreover, it regrets the treatment of the territory of Macao, under Portuguese administration until December 1999, owing to the non-application of the Convention against Torture to that territory.

"6. The Committee against Torture recommends:

That the next periodic report of the State party should be submitted within the time-limit laid down in the Convention;

That the State party should continue its efforts, particularly with respect to the reform of the Penal Code and the Code of Criminal Procedure, to ensure that its legislation is fully in conformity with the provisions of the Convention;

That it should establish machinery for the systematic review of interrogation rules, instructions, methods and practices, particularly at police stations, as stipulated in article 11 of the Convention, and ensure that such machinery is sufficiently effective, as required by article 2, to give full effect to the commitments assumed and to implement the provisions of the Convention;

That it should extend the application of the Convention to Macao, in accordance with article 2, paragraph 1, of the Convention.

"7. The Committee against Torture takes note of the undertakings given by the Portuguese delegation and is convinced that Portugal will spare no effort to fulfil them."

32. Mr. HENRIQUES GASPAR (Portugal), speaking for his delegation, thanked the Committee for its comments and recommendations, which he had noted and would transmit to his Government immediately.

33. The CHAIRMAN said that the conclusions of the Committee would shortly be transmitted in writing to the Portuguese delegation, which he thanked for having taken part in a fruitful dialogue, marked by a spirit of trust.

The meeting rose at 6 p.m.

UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
RESTRICTED

CAT/C/SR.168
22 November 1993

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 168th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 17 November 1993, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of Cyprus

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.168/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.93-85631 (E)

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Cyprus (CAT/C/16/Add.2)

1. At the invitation of the Chairman, Mr. Macris, Mr. Stavrinakis and Mrs. Markides (Cyprus) took seats at the Committee table.

2. Mr. MACRIS (Cyprus), introducing the report, said that the protection of human rights was a matter of high priority to the Government of Cyprus. The Constitution of the Republic, which was based on the Rome Convention of 1950 and the Optional Protocol to that Convention of 1952, contained clear legal definitions of human rights and fundamental liberties and provided for effective ways of enforcing them. Cyprus had, moreover, acceded to all the international human rights instruments for which treaty bodies had been established to monitor implementation. Those instruments included the European instruments on human rights and the Convention against Torture, whose provisions Cyprus had accepted unreservedly, enacting laws and applying effective administrative and judicial measures to prevent torture in its territory. Cyprus also participated actively in the Working Group entrusted with the task of preparing a draft optional protocol to the Convention against Torture, which was designed to prevent torture in places of detention.

3. A bill was about to be submitted to the House of Representatives to clarify the functions of the Commissioner for Administration (Ombudsman) competent to investigate allegations of human rights violations. In future, assuming that the bill was passed, the Commissioner would submit a report to the Council of Ministers, the House of Representatives and the Attorney-General if he concluded that a violation under investigation amounted to a criminal offence. There would then be no possibility of a cover up, given the clear separation of powers that existed in Cyprus. Another significant development, which demonstrated the Government's resolve to investigate allegations of ill-treatment by officials and to prevent such conduct, had been the establishment of a Commission of Inquiry authorized to investigate police methods with particular reference to complaints about torture and ill-treatment. Similarly, the trial of two police officers in which the Deputy Attorney-General himself had appeared for the prosecution and which had been referred to in the initial report had also shown that the Government was serious in its intention to bring persons accused of torture to justice.

4. Referring to article 2, paragraph 1, of the Convention, he drew attention to the fact that the information given in the report pertained only to the territory under the effective control of the Government of Cyprus, which could therefore not vouch for the implementation of the Convention in the territories still under Turkish control.

5. In conclusion, he commended the excellent way in which the Committee against Torture was performing its important task of ensuring observance of the provisions of the Convention.

6. Mr. BURNS (Country Rapporteur) thanked the presentative of Cyprus, Mr. Macris, for his introduction and said that it was heartening to encounter a legislative and administrative framework so clearly designed to protect human rights. Cyprus was to be complimented in taking its commitments in that area so seriously. He also commended Mr. Stavrinakis for discharging his extensive responsibilities as Cypriot Law Commissioner so capably and added that his own experiences in a similar post had made him familiar with the difficulties inherent in a position with so wide a frame of reference.

7. The report by Cyprus had been submitted 10 months late, but was, in his view, a model of the type of report which the Committee wished to see. It closely followed the Committee's guidelines and thus made the work of the Committee more efficient. It showed Cyprus to be a small, modern and prosperous democracy that was fully committed to human rights and had subscribed to all the international human rights instruments, including their optional provisions. That suggested considerable confidence on the part of the Government that its conduct in the field of human rights could withstand international scrutiny.

8. He noted with satisfaction that, unlike most States which had ratified the Convention against Torture, Cyprus had incorporated the definition of torture contained in article 1 of the Convention into its own legislation by virtue of Law No. 235 of 1990 (para. 41 of the report), making torture a separate crime for which specific penalties were prescribed. Indeed, the definition of torture adopted under Law No. 235 appeared to go further than that of the Convention by including a specific reference to "systematic torture" and thereby giving a clear warning to any person who perpetrated torture in an official capacity of the penalties he was likely to incur.

9. In other respects, too, Cypriot legislation appeared to provide very effective safeguards of human rights. Referring to paragraph 53, he noted with satisfaction that "superior orders" could not be invoked as a defence against an allegation of torture. Article 28, paragraph 1, of the Constitution, concerning the principle of equality before the law, embodied the most modern constitutional safeguards seen anywhere in the world. Statements obtained by torture (para. 103) were inadmissible in court.

10. He nevertheless had a few questions and comments. Referring to paragraph 46, he wished to know whether the Prisons' Council produced an annual public report. Were the prison regulations governing the conduct of prison officers subject to regular review?

11. He noted that, while the Constitution guaranteed "the right to life and corporal integrity" (para. 6), capital punishment had been retained for a number of offences. He wanted to know what type of capital punishment was used and how often it had been applied, if at all, since independence and under what circumstances.

12. Referring to article 8 of the Constitution, which enshrined the right of a person not to be tortured or subjected to inhuman or degrading treatment or punishment, he noted that it used the same language as found in the

United Nations and European Conventions. Liberty and security of person were protected by article 11 of the Constitution, which included some of the most up-to-date safeguards in the area of arrest and detention. He took note with particular approval of the requirement that a detained person must be brought before a judge no later than 24 hours after his arrest, and the right of a detained person to legal counsel upon arrest and to be advised of that right and of the limits placed on remands in custody. Those provisions were, in legislative terms, beyond reproach. However, he felt that the provision of article 11, paragraph 2 (e), (para. 9 of the report) on the detention of alcoholics, drug addicts or vagrants, or to prevent the spread of infectious disease, required explanation: what limits were placed on detention in such cases? Was AIDS considered to be in the category of infectious diseases which might be invoked as grounds for detention?

13. The distinction between self-executing and non-self-executing provisions of international instruments, as explained in section I.B. of the report, was, in his view, an appropriate way of dealing with such international instruments. He would like confirmation that most of the provisions of the Convention, namely, those which imposed obligations or conferred rights, were self-executing under the definition used in the report and thus required no specific legislation to be incorporated into domestic law.

14. According to paragraph 52, no state of emergency had ever been declared since independence, but he wished to know what the effect of such a state of emergency would be, bearing in mind that, under article 2 of the Convention, a state of emergency could not be invoked as grounds for suspending the prohibition on torture.

15. It was his understanding that articles 3 to 8 of the Convention were self-executing in the light of the definition used in the report and thus part of domestic law. If that was so, he wished to know why legislation was needed to ensure universal jurisdiction (para. 64).

16. The measures described in the report (para. 77 et seq.) to implement the provisions of article 10 of the Convention relating to education and information were commendable as far as they went, but he wished to know whether doctors were being trained to recognize the signs and sequelae of ill-treatment and torture.

17. While welcoming the establishment of a Complaints Committee (paras. 82 et seq.) to investigate allegations of ill-treatment by public officials as an efficient way of dealing with complaints, he thought that the members of the Complaints Committee, being predominantly police officers, might not be perceived to be totally independent.

18. The prosecution of two police officers for acts of torture had probably been the first instance of such a trial pursuant to the Convention and demonstrated a genuine will on the Government's part to suppress such conduct.

19. Referring to paragraphs 93 to 96, he said that he regarded the private citizen's right to complain to the Commissioner for Administration and to

initiate criminal proceedings against an alleged torturer as powerful weapons in the defence of the citizen's basic rights. He also noted that a criminal injuries compensation scheme was being set up and asked when it would be in operation.

20. He found it interesting that the office of Law Commissioner combined a number of different functions, including those of oversight and law reform. It thus appeared to have a wider role than the equivalent office in other Commonwealth countries and also tended to confirm that the Government was serious in its intention to implement the provisions of the Convention.

21. He drew the attention of the Cypriot delegation to a number of specific allegations which had come to light as a result of the illicit publication in a September issue of the Cyprus Weekly of parts of the leaked draft report of the European Committee for the Prevention of Torture (CPT). At its visits prior to drafting the report, CPT had heard numerous allegations of serious ill-treatment and torture of persons detained by the police. Those allegations related mainly to Limassol Town Police Station, but also to Larnaca Town Police Station and, in some less recent cases, to Nicosia. The allegations made to the CPT delegation showed a high degree of consistency as to the types of torture used, which included suspension by the legs, electric shocks and blows with clubs and truncheons, and the circumstances under which it had allegedly been inflicted, which had generally involved interrogation at night, the wearing of hoods by police officers and victims, and verbal abuse.

22. Medical evidence obtained by the CPT delegation had also tended to corroborate the allegations and information received by ad hoc complaints committees and discussions with groups such as the Legal Committee of the House of Representatives had suggested that the ill-treatment of persons in police custody was a serious problem. CPT had concluded that persons held at certain police stations ran a serious risk of ill-treatment or torture and had expressed its reservations concerning the system of holding remand prisoners in police premises for long periods, as opposed to prison establishments.

23. In the light of the allegations to which he had referred and which were now in the public domain in Cyprus, he wished to know what conclusions had been reached by the Commission of Inquiry set up in response to the allegations and what other action had been taken.

24. He then referred to the specific case of Mr. Lykourgos Vassiliou, which had also been published in the Cyprus Weekly. Mr. Vassiliou had apparently suffered serious injuries at the hands of police officers who had arrested him, although they had claimed that the injuries resulted from a fall. He wished to know what the Government's response had been to the case and what penalties, if any, had been imposed on those responsible for his injuries.

25. He would also like to know how the appointment of judges took place and how judges could be dismissed and whether he was correct in his assumption that there were no jury trials in Cyprus.

26. He noted an apparent contradiction between the statement in the report by the European Committee for the Prevention of Torture that people could be

detained in police stations and paragraph 44 of the report of Cyprus, which stated that persons awaiting trial were held in prisons, and asked whether the Cypriot delegation could explain the discrepancy.

27. In conclusion, he drew the attention of the delegation to a comment made by a senior police officer which had also been reported in the Cyprus Weekly. In reply to the allegation by a defence lawyer that police brutality was a common occurrence, the officer in question had denied that excessive brutality ever took place, while admitting that prisoners might receive "a slap or two" when being interrogated. Such a public admission by a senior police officer was, in his view, disquieting and suggested that more stringent oversight of police activities might be required.

28. Mr. EL IBRASHI (Alternate Country Rapporteur) expressed his appreciation of the efforts made by the Government of Cyprus to fulfil its obligations under the Convention.

29. With regard to paragraph 34 of the core document on Cyprus (HRI/CORE/1/Add.28), he asked what was meant by "a neutral President". Paragraph 39 of the core document referred to the creation by the Administration of Justice Law of 1964 of a new Supreme Court which had taken over the jurisdiction of both the Supreme Constitutional Court and the High Court. Were the two courts now incorporated into one and how did the system work?

30. As to paragraph 53 of the core document and paragraph 106 of the initial report, he welcomed the establishment of the post of Law Commissioner, asked how he was appointed and what role he played in the practical implementation of the Convention.

31. He wished to know whether the non-governmental organizations mentioned in paragraph 55 of the core document were national or international. How did Amnesty International, for instance, cooperate with non-governmental organizations in Cyprus? Did non-governmental organizations report to the Government? To whom could non-governmental organizations report cases of alleged violations of the Convention? What authority did they have? Could they visit prisons and make inquiries?

32. He wished to know how the Commissioner for Administration (Ombudsman) mentioned in paragraphs 20, 93 and 94 of the report was appointed and how many cases he had referred to the Attorney-General.

33. He would like some clarification of the last sentence of paragraph 53 of the report, since he failed to understand how a civil servant could be obliged to comply with an illegal direction if his superior had insisted on the basis of the opinion of the Attorney-General. Was that opinion sought in advance?

34. In connection with paragraph 64 of the report, he, like Mr. Burns, wished to know why Cyprus was considering taking measures to extend its jurisdiction over offences committed abroad, since the Convention was directly applicable. Was new legislation required or could the provision of article 8 be applied automatically?

35. With regard to paragraph 90 of the report, he asked what cases had been investigated by the ex-judicial officer appointed by the Council of Ministers, what his functions were and whether he had replaced the Complaints Committee or whether it still existed.

36. He requested clarification of paragraph 95 of the report, which stated that a citizen had the right to institute himself criminal proceedings against a person who had allegedly tortured him, if for any reason no criminal proceedings had been taken against that person. Such a procedure would be quite normal in the case of a complaint, but perhaps something else was involved.

37. He was happy to note that, as stated in paragraph 56 of the core document, the role of the mass media in the promotion and protection of human rights was considerable. The independence of the press was well attested by the report in the Cyprus Weekly referred to by Mr. Burns and he too would be interested in hearing the Cypriot delegation's view of the cases Mr. Burns had mentioned.

38. Mr. BEN AMMAR, referring to paragraph 29 of the report, asked for some information on the tasks of the Ministry of Justice and Public Order and said that he wished to know whether, in certain circumstances, the functions of justice and public order might not be incompatible with and infringe the democratic principle of the separation of powers.

39. With regard to the penultimate sentence of paragraph 89, why had the case where a criminal offence appeared to have been committed been discontinued?

40. In connection with the last sentence of paragraph 96, which read: "The court may give directions for the investigation of the complaint and further direct that the complainant be examined by a doctor", he pointed out that, under the terms of the Convention, the court was in fact required to order an inquiry: that was not merely an option.

41. Mr. MIKHAILOV said that he agreed with Mr. Burns' comments on the excellence of the report.

42. With regard to paragraph 5, he asked whether the legislative, executive and judicial authorities were in fact independent of each other or whether the executive could influence the judicial authority.

43. With respect to paragraphs 25 et seq., he asked who appointed the Attorney-General and to whom he was responsible. Was there any judicial control over the Attorney-General's actions, since it was stated in paragraph 68 of the report that all prosecutions came under his authority and control? Did he depend in any way on the executive?

44. In paragraphs 11 to 13 of the report, it was explained that international conventions were separated into two categories, those that were self-executing and those that required legislative, executive or administrative action. He wondered why the question was not settled by the Constitution and asked

whether there was any intention of changing the Constitution and whether the Supreme Court's decision mentioned in paragraph 13 had given rise to any practical difficulties.

45. Paragraph 6 of the report referred to article 7, paragraph 2, of the Constitution, which stated that a law might provide for the death penalty only in cases of premeditated murder, high treason, piracy jure gentium and capital offences under military law. However, that provision was inconsistent with the statement in paragraph 24 that the death penalty for premeditated murder had been abolished and mandatory life imprisonment substituted. Had the Constitution been changed? How was the provision for life imprisonment implemented?

46. With respect to paragraphs 99 to 102 of the report, he noted that there was a general rule that the Government was responsible for the acts of its agents in the exercise of their functions. He asked for further details of remedies and compensation for victims of torture, the difference between general and special damages and the legal mechanism by which compensation was granted.

47. The CHAIRMAN, referring to paragraph 11 of the report, asked how the provision for reciprocity in article 169, paragraph 3 of the Constitution could apply to multilateral treaties and, in particular, to the Convention against Torture.

48. With respect to paragraph 14, he welcomed the fact that articles 3, 6, 7 and 8 of the Convention were self-executing. He also welcomed the promulgation of a special law making torture a criminal offence.

49. Concerning paragraph 64, Mr. Burns had asked whether article 5 on the extension of jurisdiction was not self-executing, but the article was rightly not mentioned in paragraph 14 of the report, since it did not order any measures, but merely referred to domestic legislation. The necessary measures should therefore be taken as soon as possible. He would, however, be glad to hear the view of the Cypriot delegation on that point.

50. On paragraph 74, he considered that, because article 8 of the Convention was self-executing, it was unnecessary to amend the law.

51. In connection with paragraph 79, which mentioned education and training for police officers, he asked whether judges and military and medical personnel were given any similar training, as required by article 10 of the Convention.

52. Referring to paragraph 81, he asked how the systematic review of interrogation rules required by article 11 of the Convention was carried out.

53. In connection with paragraphs 89 and 92, which mentioned cases of complaints of ill-treatment, he wished to know the results of the proceedings and the penalties imposed, if not at once, then in the next periodic report.

54. With regard to paragraphs 99 to 102, he requested further information on how damages were awarded, especially to the class of dependants that had been widened by the amendment to the Civil Wrongs Law. Did the damages cover loss of support by the father of a family, for instance? Had there been any cases in which such damages had been awarded and what had the amount been?

55. In connection with paragraph 105 of the report, he asked whether there was still corporal punishment in Cyprus.

56. He would welcome information on cases reported in the press, either orally or in the next report.

The public meeting rose at 11.40 a.m.

UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.169
3 December 1993

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 169th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 17 November 1993, at 3 p.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of Cyprus (continued); conclusions of the Committee

* The summary record of the closed part of the meeting appears as document CAT/C/SR.169/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.93-85678 (E)

The meeting was called to order at 3.30 p.m.

CONSIDERATION OF REPORT SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Cyprus (CAT/C/16/Add.2) (continued)

1. At the invitation of the Chairman, Mr. Macris, Mr. Stavrinakis and Mrs. Markides (Cyprus) took seats at the Committee table.

2. Mr. STAVRINAKIS (Cyprus) thanked the Committee for its comments on his country's report. He would do his best to answer the very pertinent questions put to him at the preceding meeting, starting with those of Mr. Burns, who had asked how judges were appointed in Cyprus. The members of the Supreme Court were appointed by the President of the Republic on the recommendation of the Supreme Court. They retired at age 68. The members of the lower courts were appointed by the Supreme Council of the Judicature, composed primarily of Supreme Court judges; they retired at age 60. Judges in both categories could be removed from office only on the ground of misconduct and only by the body which had appointed them.

3. A provision of the Constitution enabled the Government to promulgate laws on the detention of alcoholics, drug addicts and persons suffering from infectious diseases. At present, there was an act on the internment of mental patients as well as an act providing for certain preventive measures in the case of detainees suffering from infectious diseases. He was not in a position to provide details on the contents of those texts, but they would be supplied in the next report of Cyprus. The Act on the internment of mental patients was currently under review. At present, it provided that mental patients could be interned only by court order and for an indefinite period. The patients in question could, however, be released on parole if their condition improved; they could also submit a request to the competent authorities for the annulment of the decision to intern them. Once the Act had been updated, it would be possible to order the internment of mental patients only for a definite period. If at the end of the period the patient was not in a fit state to be released, a request for the extension of the measure could be made to the courts. The new provision was still being discussed. In the case of mentally disturbed offenders or, in other words, persons who had committed an offence and had been found guilty, but not responsible for their actions, the decision to intern was taken on the recommendation of the Council of Ministers. Another category of persons whose temporary internment could be ordered by the courts was that of persons momentarily incapable of being present at their trial, which would take place only when their condition had improved. Such cases were very rare.

4. Mr. Burns had asked what was meant by the statement that some of the provisions of conventions in force in Cyprus were "by their very nature self-executing" (CAT/C/16/Add.2, para. 12). It was true that that term was not easy to explain; to a large extent, it was a matter of interpretation. In any event, there was nothing in Cypriot law to prevent the legislator from promulgating laws reaffirming the provisions of a convention, whether or not they were self-executing. That was in no way contradictory. A decision to adopt a law confirming certain provisions of a convention was usually taken

for the sake of clarity. In extradition cases, for example, it might be useful to avoid any ambiguity by expressly including certain provisions of international instruments in domestic law, even though they already had force of law in Cyprus.

5. The powers of the Prisons' Council were set forth in the Prisons Law. Its members were appointed by the Council of Ministers for a period of three years. Their duties and powers were somewhat ill-defined; they inspected prisons, inquired into the living conditions of detainees and received their complaints concerning matters of all kinds, including the justification for or the severity of disciplinary measures taken by the governor of the prison. To date, the Prisons' Council had not had to deal with any complaints of torture or ill-treatment. It should be noted that the Prisons Law and Regulations were at an advanced stage of revision which would help to define the role of the Prisons' Council more clearly.

6. Mr. Burns had asked for information on what happened if an official refused to obey orders by his superior officers which he thought were illegal. In most cases, the official was not a lawyer and could not always be sure that the act in question was unlawful. He could then refuse to carry out the order and bring the matter to the attention of his superior officer, who would have to refer the matter to the Attorney-General of the Republic for a decision on the lawfulness of the order given. If the Attorney-General took the view that the order was in conformity with the law, the official would have to carry it out.

7. It had been asked whether, in the event of the proclamation of a state of emergency, the provisions of the Convention continued to be fully applicable. Article 33 of the Cyprus Constitution did not permit any relaxation in the protection of fundamental human rights in the event of a state of emergency save to the extent permitted by each right declared in the Constitution. Torture, a flagrant violation of human rights, was therefore prohibited even if a state of emergency was in force.

8. It had been asked whether doctors, health officers and law enforcement officials received any training in the field of torture prevention. Until a recent period, Cyprus had not had a single expert in forensic medicine. Recently, however, a doctor had been sent abroad to acquire the necessary diplomas in that discipline. It appeared that he had completed his studies and would shortly return to Cyprus; it would then be possible to offer training to the officials concerned and to teach them, for example, to identify signs of ill-treatment on persons alleging that they had been tortured. As for sensitizing law enforcement officials to the problem of torture, regular training was provided, for example, at the police college; lecturers included the Deputy Attorney-General, Supreme Court judges and district court judges. The staff of psychiatric hospitals was also trained, although less systematically. Military authorities were also required to provide such training.

9. The question had been asked whether private prosecutions received the same treatment as official ones. The only difference between the two was that, in the case of private prosecutions, the proceedings were not instituted by the police or the Attorney-General. Once the judge had decided that the

prosecution was admissible, proceedings were instituted in the normal way on behalf of the persons bringing the suit and under the Attorney-General's supervision. As in all other cases, the Attorney-General, could, of course, exercise his right to refuse to prosecute.

10. A complete revision of Prisons Regulations was currently under way, but the Regulations as a whole were not reviewed systematically at regular intervals; if it appeared, however, that a particular aspect needed amending, that could be done at any time.

11. One of the reasons which had induced the Council of Ministers to set up a Commission of Inquiry was the report prepared by the European Committee for the Prevention of Torture of the Council of Europe; the period which the Commission of Inquiry was required to cover was, in fact, the same as that covered by the European Committee for the Prevention of Torture. The Commission of Inquiry was mandated to carry out a thorough investigation of methods used by the police in the arrest, detention and interrogation of suspects, especially where there had been allegations of ill-treatment. Complaints had been filed in September or October 1993 and the Commission had opened an inquiry in mid-October 1993; that inquiry was in progress and, in accordance with the observations and recommendations contained in the report of the European Committee for the Prevention of Torture, any action would have to await the Commission's report and recommendations. The police and other services concerned were, however, already thinking about the measures that would have to be taken.

12. The Vassiliu case to which reference had been made was not the same as the case mentioned in the report in connection with the trial of two police officers. That was a different case, in respect of which an investigation had been conducted and in which the file had been forwarded to the Attorney-General, who had requested that proceedings should be instituted against the police officers concerned. He was not in a position to provide more details on that case.

13. Jury trials did not exist in Cyprus because the country was too small for it to be possible to select jurors in a satisfactory manner. Justice was administered by highly competent judges. If the maximum penalty for the offence committed was not more than three years' imprisonment, the offence was tried by a single judge; more serious cases were brought before an assize court composed of three judges.

14. In connection with paragraph 44 of the report, it had been asked whether detainees were held in prisons or in police stations. That depended on the length of the prison sentence and the place where the detainee happened to be. The only central prison in Cyprus was in Nicosia. If a person had been arrested and had to be interrogated 250 kilometres away, holding him in the central prison would involve too many problems.

15. Replying to a question raised by Mr. El Ibrashi, he said that, prior to 1963, there had been two higher courts, the Supreme Constitutional Court and the High Court; in the interests of impartiality, their presidents were

not supposed to be nationals of Cyprus, Greece, Turkey or the United Kingdom. After the events of 1963, the two courts had been merged. Some of the judges on what was now the Supreme Court also acted as appeals judges.

16. The post of Law Commissioner had been created by an administrative act, not a legislative one. The holder of the post was entrusted with revising, consolidating, translating, updating and simplifying legislative acts and generally ensuring that they were easy to read. He also chaired various ad hoc committees set up to review legislative texts in a specific area, such as civil aviation.

17. With regard to the role played by non-governmental organizations in drafting legislation, he said that interested non-governmental organizations were invited to state their views and make suggestions when a draft law or regulation was in preparation. For example, the House of Representatives had given a hearing to an organization concerned with defending the rights of the mentally handicapped and, on another occasion, it had heard associations whose activities related to violence within the family.

18. The Commissioner for Administration or ombudsman was appointed by the President of the Republic subject to approval by a two-thirds majority of the House of Representatives. His term of office was six years. Detailed information about his activities would be provided in the next report.

19. The special investigator did the same work as a police investigator, but was not himself a member of the police force. He was appointed to conduct an inquiry in cases involving the police force or one of its members. Accordingly, there was not just one special investigator, but several, as required.

20. Mr. Ben Ammar had expressed surprise at the use of the term "Ministry of Justice and Public Order". In point of fact, the Minister of Justice dealt exclusively with the material aspects of courts and prisons and had no responsibilities with regard to the administration of justice, the appointment and promotion of judges or the registering of complaints relating to the administration of justice. Recently, the Ministry had also been placed in charge of public order or, in other words, of supervising the police force and law enforcement agencies, and that explained its name.

21. With regard to the complaints examined by the complaints committees referred to in paragraph 89 of the report, he regretted that he was unable to provide detailed information on current cases or their outcome. Information on that point would be included in the next report.

22. A member of the Committee had been surprised to read in paragraphs 96 and 97 of the report that the court "may" give directions for the investigation of a complaint alleging torture or ill-treatment and that an investigation of a complaint of ill-treatment "may" be directed by a court during a trial if the accused claimed that his confession had been obtained by torture or ill-treatment. The use of the word "may" in the report meant only that the power of the courts was discretionary; in fact, an investigation was always ordered in such cases.

23. Referring to the separation of powers, he said that Cyprus had a presidential regime. The members of the Council of Ministers were not elected, but appointed by the President. The House of Representatives was completely independent of both the executive and the judiciary. The only link between the executive and the judiciary was the fact that judges of the Supreme Court were appointed by the President of the Republic; the appointments were made one by one as posts fell vacant. That usually meant that members of the Supreme Court were appointed by different Presidents. Once appointed, judges were not answerable to the President in office.

24. The Attorney-General was an independent official appointed by the President of the Republic and could remain in office until the age of 68. His role was to act as legal adviser to the Government and to institute criminal proceedings. He could not be removed from office except on grounds of professional misconduct.

25. On the subject of the death penalty, he said that there was no conflict between the Constitution and the law, since the law gave effect to the principles embodied in the Constitution. Article 7 of the Constitution stated that a law could provide for the death penalty only in cases of premeditated murder, high treason, piracy jure gentium and capital offences under military law. It should be noted that the death penalty was carried out by hanging. The last execution had taken place in 1963. Law No. 86 of 1983 had abolished the death penalty for premeditated murder and had replaced it by life imprisonment. Courts could also pronounce the maximum sentence of life imprisonment for very serious crimes such as rape or drug trafficking. The law did not define a minimum penalty. There was also a system for the reduction of penalties based on the length of the sentence, the number of years already served and the prisoner's behaviour. It was possible for a person sentenced to life imprisonment to serve only 20 or even 10 years in prison.

26. The Chairman of the Committee had asked whether the Convention against Torture was subject to reciprocity in Cyprus. Reciprocity was a prerequisite for cooperation, for example, in respect of evidence or extradition. Otherwise, there was no reciprocity except with States parties to the Convention.

27. A member of the Committee had asked how the compensation awarded in cases of torture was calculated and had wanted to know whether a case of ill-treatment was treated differently from others. He recalled that damages were awarded and determined by civil courts rather than by criminal courts. The victim could bring an action in the civil courts without waiting for the offender's conviction by a criminal court. There was no ceiling for damages, which always corresponded to the actual harm suffered. A distinction was drawn between general damages known at the time of the trial (cost of medical treatment, loss of earnings, etc.) and the special damages which might be awarded later. In the event of the victim's death, damages were awarded to his dependants and took account of losses incurred as a result of the victim's death. A recent amendment of the law added certain members of the extended family to the class of dependants which had previously included only the victim's children and spouse.

28. A question had also been asked about corporal punishment. Such punishment in educational establishments had been abolished by a special law. He expressed the hope that he had answered all the Committee's questions and undertook to provide more detailed information on certain laws in writing.

29. The CHAIRMAN asked the members of the Committee whether they had any further questions.

30. Mr. DIPANDA MOUELLE said that he wished to know whether there was only one Attorney-General in the Cypriot judicial system and to which court he was attached.

31. Mr. STAVRINAKIS (Cyprus) said that Cyprus had an Attorney-General and a Deputy-Attorney-General. The Attorney-General had the same rank as the President of the Supreme Court.

32. The delegation of Cyprus withdrew.

33. The public part of the meeting was suspended at 4.40 p.m. so that the draft conclusions and recommendations on the initial report of Cyprus could be considered in closed session; it resumed at 5.10 p.m.

Initial report of Cyprus (CAT/C/16/Add.2): conclusions of the Committee

34. At the invitation of the Chairman, the delegation of Cyprus took seats at the Committee table.

35. Mr. BURNS read out to the Committee the following conclusions on the report of Cyprus which had been adopted after consideration in the closed part of the meeting:

"1. Introduction

The report of Cyprus was considered by the Committee at its 168th and 169th meetings on 17 November 1993. The report was due on 16 August 1992 and was received on 23 June 1993. In all respects, the report meets the guidelines of the Committee and the Committee compliments Cyprus for the comprehensive and detailed information provided.

2. Positive aspects

The Committee feels that Cyprus has a very advanced legislative and administrative scheme for the implementation of human rights values contained in international instruments.

In this regard, the Committee notes with satisfaction the proposed amendment to the ombudsman's jurisdiction granting him clear authority to investigate and report on human rights violations.

Legal protection of basic rights is also apparent in the constitutional provisions of Cyprus.

3. Factors and difficulties affecting implementation of the Convention

There seem to be no structural or legal impediments to full implementation of the Convention. On the contrary, the legal, legislative and administrative framework is most comprehensive and probably as good as the most advanced anywhere.

4. Principal subjects of concern

Casual brutality by police officers has been reported, particularly in Limassol Police Station.

This may reveal a lack of professionalism which if not dealt with strictly could, in a small country with a fairly homogenous culture, take a firm hold on police practices.

The Committee notes, though, the response of the authorities in prosecuting two officers on charges of torture and the decision of President Clerides to ask the Council of Ministers to set up a Commission of Inquiry into the reported draft conclusions of the European Committee for the Prevention of Torture. The Committee notes also that this Commission of Inquiry has been set up and is engaged in its inquiries.

5. Recommendations

The legal and administrative constructs in Cyprus need no changes. But two recommendations could be made:

(a) When complaints committees are set up to examine questions of police brutality that may contravene our Convention against Torture, a great effort should be made to ensure that their composition cannot be criticized on the basis of real or perceived partiality.

(b) It is sometimes very difficult for small, homogenous States to change institutional attitudes and practices without creating the risk of strong reaction.

Very often it is useful to utilize an external agency for this catalytic role. Quite obviously, the police not only need to be disciplined and prosecuted for any unlawful conduct, but a real attempt must be made properly to internalize their attitudes towards the human rights values that they must respect in their everyday activities.

In this regard, as well as the emphasis in their police training, the Advisory Services of the Human Rights Centre are ready to assist in the educational and re-educational mission. A joint initiative between that body and the Government of Cyprus, with appropriate attendant publicity, may go some way towards affecting police attitudes.

(c) The requirement of reciprocity in Conventions even in the limited sense that you opined in the answer to the Chairman is somewhat cryptic and this could be revisited in the periodic report and clarified.

(d) The Committee also likes to receive answers to its unanswered questions.

(e) The Committee wishes to express its appreciation to Cyprus for its comprehensive report and obvious willingness to deal with the questions raised by the members of the Committee itself."

36. Mr. STAVRINAKIS (Cyprus) assured the members of the Committee that his Government would do everything necessary in order to bring Cypriot legislation into line with the provisions of the Convention and would provide answers to the questions still outstanding.

37. The CHAIRMAN thanked the delegation of Cyprus.

The meeting rose at 5.20 p.m.